

Seidel, Rebecca

From: Hertling, Richard
Sent: Wednesday, January 17, 2007 6:53 PM
To: Goodling, Monica; Seidel, Rebecca
Cc: Sampson, Kyle
Subject: RE: Talking Points & Resume for Tim Griffin

Is this for tomorrow's hearing? Not sure why this would come up tomorrow, but I guess if Sessions is willing, he can make that call. Rebecca can handle contact with Sessions's staff.

From: Goodling, Monica
Sent: Wednesday, January 17, 2007 6:45 PM
To: Seidel, Rebecca; Hertling, Richard
Cc: Sampson, Kyle
Subject: Talking Points & Resume for Tim Griffin

Rebecca/Richard -- WH Political reached out to Sen. Sessions and requested that he ask helpful questions to make clear that Tim Griffin is qualified to serve. They requested that someone in our OLA call the Senator's staff and make sure that we take advantage of the offer. Here are talkers on Griffin, as well as a narrative that can be used by staff, and his resume. I think it would actually be helpful for all of the Rs to have. In any case, can you please touch base with Sessions' folks? Thanks.

<< File: Griffin Talkers.doc >> << File: Griffin narrative.doc >> << File: Griffin resume.doc >>

Seidel, Rebecca

From: Seidel, Rebecca
Sent: Wednesday, January 17, 2007 7:08 PM
To: 'Hayden, Cindy (Judiciary-Rep)'
Subject: FW: Talking Points & Resume for Tim Griffin

Importance: High

Attachments: Griffin Talkers.doc; Griffin narrative.doc; Griffin resume.doc

I understand WH talked to Sessions about asking a friendly Q on this at the hearing? Call me



Griffin Talkers.doc
(33 KB)



Griffin
narrative.doc (30 KB)



Griffin resume.doc
(92 KB)

**TIMOTHY GRIFFIN AS INTERIM UNITED STATES ATTORNEY
FOR THE EASTERN DISTRICT OF ARKANSAS**

- Timothy Griffin is highly qualified to serve as the U.S. Attorney for the Eastern District of Arkansas. The Attorney General appointed Mr. Griffin as the interim U.S. Attorney following the resignation of Bud Cummins, who resigned on December 20, 2006.
- The Attorney General has told Senator Pryor that the Administration would like to nominate Mr. Griffin and that we are not circumventing the process by making an interim appointment. However, while the Administration consults with the home-state Senators on a potential nomination, the Department must have someone that they have confidence in lead the office until such time as a new U.S. Attorney is nominated and confirmed.
- Mr. Griffin has significant experience as a federal prosecutor at both the Department of Justice and as a military prosecutor. At the time of his appointment, he was serving as a federal prosecutor in the Eastern District of Arkansas. Also, from 2001 to 2002, Mr. Griffin served at the Department of Justice as Special Assistant to the Assistant Attorney General for the Criminal Division and as a Special Assistant U.S. Attorney in the Eastern District of Arkansas in Little Rock. In this capacity, Mr. Griffin prosecuted a variety of federal cases with an emphasis on firearm and drug cases. He also organized the Eastern District's Project Safe Neighborhoods (PSN) initiative, the Bush Administration's effort to reduce firearm-related violence by promoting close cooperation between State and federal law enforcement, and served as the PSN coordinator.
- Prior to rejoining the Department in the fall of 2006, Mr. Griffin completed a year of active duty in the U.S. Army, and is in his tenth year as an officer in the U.S. Army Reserve, Judge Advocate General's Corps (JAG), holding the rank of Major. In September 2005, Mr. Griffin was mobilized to active duty to serve as an Army prosecutor at Fort Campbell, Ky. At Fort Campbell, he prosecuted 40 criminal cases, including *U.S. v. Mikel*, which drew national interest after Pvt. Mikel attempted to murder his platoon sergeant and fired upon his unit's early morning formation. Pvt. Mikel pleaded guilty to attempted murder and was sentenced to 25 years in prison.
- In May 2006, Tim was assigned to the 501st Special Troops Battalion, 101st Airborne Division and sent to serve in Iraq. From May through August 2006, he served as an Army JAG with the 101st Airborne Division in Mosul, Iraq, as a member of the 172d Stryker Brigade Combat Team Brigade Operational Law Team, for which he was awarded the Combat Action Badge and the Army Commendation Medal.
- Prior to being called to active duty, Mr. Griffin served as Special Assistant to the President and Deputy Director of the Office of Political Affairs at the White House, following a stint at the Republican National Committee. Mr. Griffin has also served as Senior Counsel to the House Government Reform Committee, as an Associate Independent Counsel for *In Re: Housing and Urban Development Secretary Henry Cisneros*, and as an associate attorney with a New Orleans law firm.

- Mr. Griffin graduated *cum laude* from Hendrix College in Conway, Ark., and received his law degree, *cum laude*, from Tulane Law School. He also attended graduate school at Pembroke College at Oxford University. Mr. Griffin was raised in Magnolia, Ark., and resides in Little Rock with his wife, Elizabeth.

WHO IS TIM GRIFFIN?

On Monday, *The New York Times* criticized the appointment of Tim Griffin as the U.S. Attorney for the Eastern District of Arkansas and in doing so noted that Mr. Griffin “has a resume that includes working for Karl Rove and heading up opposition research for the Republican National Committee.” The *Times* characterized Mr. Griffin’s legal record with one word: “thin.” Mr. Griffin’s resume deserves a closer look.

First and foremost, Mr. Griffin is a lawyer, a *cum laude* graduate of Tulane Law School, in New Orleans, and is a member of both the Arkansas and Louisiana bars.

Mr. Griffin has served as an officer—currently a major—in the U.S. Army Judge Advocate General’s (JAG) Corps for over ten years. Like all JAGs, he has routinely practiced the basic legal skills that many lawyers never acquire: drafting wills, writing opinions and advising soldiers. In 2002, his supervisor wrote: “CPT Griffin has the gift of easily identifying legal issues and drafting clear, concise, and correct opinions. . . . CPT Griffin is a born litigator.”

In fact, in 2005, Mr. Griffin was serving as Special Assistant to President Bush when he was mobilized to active duty for a year. He moved to Fort Campbell, Kentucky to serve as an Army prosecutor. At Fort Campbell, he prosecuted numerous criminal cases. One of those cases, *U.S. v. Mikel*, drew national interest after Private Mikel attempted to murder his platoon sergeant and fired upon his unit’s early morning formation.

After the Mikel case, Mr. Griffin was allowed to fill a need for a JAG officer in Mosul, Iraq. He was assigned to the 501st Special Troops Battalion (STB), 101st Airborne Division and detailed to the 172d Stryker Brigade Combat Team (SBCI) Brigade Operational Law Team (BOLT), for which he was awarded the Combat Action Badge and the Army Commendation Medal.

Mr. Griffin served the Department of Justice as Special Assistant to then-Assistant Attorney General, Criminal Division, Michael Chertoff and on three separate occasions as a federal prosecutor, including from 2001-2002 in the Eastern District of Arkansas where he now serves. During that stint, he prosecuted a variety of federal cases with an emphasis on firearm and drug cases. He also organized the District’s Project Safe Neighborhoods (PSN), the Bush Administration’s initiative to reduce firearm-related violence by promoting close cooperation between state and federal law enforcement, and served as the PSN coordinator.

He served from 1997-1999 as Senior Counsel to the Government Reform Committee, U.S. House of Representatives. Immediately following law school, he practiced law for Jones, Walker, et al., of New Orleans, one of the largest law firms in the South.

Mr. Griffin is a *cum laude* graduate of Hendrix College in Conway, Arkansas, where he received his B.A., and attended graduate school in Modern European History at Pembroke College, Oxford University, in Oxford, England.

J. TIMOTHY GRIFFIN

EDUCATION

Tulane University Law School. New Orleans, Louisiana. Juris Doctor, *cum laude*, May 1994. Cumulative G.P.A.: 3.25/4.00; Rank: 80/319, Top 25%. Common law and civil law curricula. Legal Research and Writing grade: A.

- Senior Fellow, Legal Research and Writing Program. Taught first year law students legal research and writing.
- Volunteer, The New Orleans Free Tutoring Program, Inc.

Oxford University, Pembroke College. Oxford, England. Graduate School, British and European History, 1990-1991.

- Under-secretary and Treasurer, Oxford University Clay Pigeon Shooting Club.

Hendrix College. Conway, Arkansas. Bachelor of Arts in Economics and Business, *cum laude*, June 1990. Cumulative G.P.A.: Major 3.79/4.00, Overall 3.78/4.00; Rank: 22/210, Top 10%.

- Oxford Overseas Study Course, September 1988-May 1989, Oxford, England.

LEGAL EXPERIENCE

U.S. Attorney (Interim). Eastern District of Arkansas, U.S. Department of Justice. Little Rock, Arkansas. December 2006-present.

- Served as a Special Assistant U.S. Attorney, Eastern District of Arkansas, September-December 2006.

Trial Counsel, U.S. Army JAG Corps. Criminal Law Branch, Office of the Staff Judge Advocate. Fort Campbell, Kentucky, September 2005-May 2006; August-September 2006.

- Successfully prosecuted U.S. v. Mikel, involving a soldier's attempted murder of his platoon sergeant.
- Provided legal advice to E Co., 1st and 3rd Brigade Combat Teams, 101st Airborne Division (Air Assault)(R)(P).
- Prosecuted 40 Army criminal cases at courts-martial and federal criminal cases as a Special Assistant U.S. Attorney, Western District of Kentucky and Middle District of Tennessee, and handled 90 administrative separations.

Brigade Judge Advocate, U.S. Army Judge Advocate General's (JAG) Corps. Operation Iraqi Freedom. Task Force Band of Brothers. 501st STB, 101st Airborne Division (Air Assault). Mosul, Iraq, May-August 2006.

- Served on the Brigade Operational Law Team (BOLT), 172d Stryker Brigade Combat Team, FOB Marez, Iraq.
- Provided legal advice on various topics, including financial investigations, rules of engagement, and rule of law.

Special Assistant to the Assistant Attorney General. Criminal Division, U.S. Department of Justice. Washington, D.C. and Little Rock, Arkansas. March 2001-June 2002.

- Tracked issues for Assistant Attorney General Michael Chertoff and worked with the Office of International Affairs (OIA) on matters involving extradition, provisional arrest and mutual legal assistance treaties (MLATs).
- Prosecuted federal firearm and drug cases and served as the coordinator for Project Safe Neighborhoods, a strategy to reduce firearm-related violence through cooperation between state and federal law enforcement, as a Special Assistant U.S. Attorney, Eastern District of Arkansas, in Little Rock, September 2001-June 2002.

Senior Investigative Counsel. Committee on Government Reform, U.S. House of Representatives. Washington, D.C. January 1997-February 1998; June 1998-September 1999.

- Developed hearing series entitled "National Problems, Local Solutions: Federalism at Work" to highlight innovative and successful reforms at the state and local levels, including: "Fighting Crime in the Trenches," featuring New York City Mayor Rudolph Giuliani, and "Tax Reform in the States."
- Pursuant to the Committee's campaign finance investigation, interviewed Johnny Chung and played key role in hearing detailing his illegal political contributions; organized, supervised and conducted the financial investigation of individuals and entities; interviewed witnesses; drafted subpoenas; and briefed Speaker of the House Newt Gingrich.

Associate Independent Counsel. U.S. Office of Independent Counsel David M. Barrett. *In re: Henry G. Cisneros, Secretary of Housing and Urban Development (HUD)*. Washington, D.C. September 1995-January 1997.

- Interviewed numerous witnesses with the F.B.I. and supervised the execution of a search warrant.
- Drafted subpoenas and pleadings and questioned witnesses before a federal grand jury.

OLA00000560

Associate Attorney. General Litigation Section. Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P. New Orleans, Louisiana. September 1994-September 1995.

- Drafted legal memoranda and pleadings and conducted depositions.

ADDITIONAL WORK EXPERIENCE

Special Assistant to the President and Deputy Director. Office of Political Affairs, The White House. Washington, D.C. April-September 2005. On military leave after mobilization to active duty, September 2005-September 2006.

- Advised President George W. Bush and Vice-President Richard B. Cheney.
- Organized and coordinated support for the President's agenda.

Research Director and Deputy Communications Director. 2004 Presidential Campaign, Republican National Committee (RNC). Washington, D.C. June 2002-December 2004.

- Briefed Vice-President Richard B. Cheney and other Bush-Cheney 2004 (BC04) and RNC senior staff.
- Managed RNC Research, the primary research resource for BC04, with over 25 staff.
- Worked daily with BC04 senior staff on campaign and press strategy, ad development and debate preparation.

Deputy Research Director. 2000 Presidential Campaign, Republican National Committee (RNC). Washington, D.C. September 1999-February 2001.

- Managed RNC Research, the primary research resource for Bush-Cheney 2000 (BC00), with over 30 staff.
- Served as legal advisor in Volusia and Brevard Counties for BC00 Florida Recount Team.

Campaign Manager. Betty Dickey for Attorney General. Pine Bluff, Arkansas. February 1998-May 1998.

SUMMARY OF MILITARY SERVICE

Major. JAG Corps, U.S. Army Reserve. Commissioned First Lieutenant, June 1996.

- Served on active duty in Mosul, Iraq with the 101st Airborne Division (Air Assault), and at Fort Campbell, Kentucky, September 2005-September 2006.
- Authorized to wear 101st Airborne Division (Air Assault) "Screaming Eagle" combat patch.
- **Medals, Ribbons and Badges:** Army Commendation Medal with Five Oak Leaf Clusters; Army Achievement Medal with Four Oak Leaf Clusters; Army Reserve Components Achievement Medal with Two Oak Leaf Clusters; National Defense Service Medal; Iraq Campaign Medal; Global War on Terrorism Service Medal; Armed Forces Reserve Medal with Bronze Hourglass and "M" Devices; Army Service Ribbon; and Army Reserve Overseas Training Ribbon with "3" Device; and Combat Action Badge.

ACTIVITIES AND ASSOCIATIONS

Arkansas Bar Association. Little Rock, Arkansas. *Member*, 1995-present. Annual Meeting Subcommittee on Technology, 2002. Admitted to Arkansas Bar, April 26, 1995.

Friends of Central Arkansas Libraries (FOCAL). Little Rock, Arkansas. *Life Member*.

Florence Crittenton Services, Inc. Little Rock, Arkansas. *Member*, Board of Directors, 2001-2002.

Louisiana State Bar Association. New Orleans, Louisiana. *Member*. Admitted October 7, 1994. Currently inactive.

The Oxford Union Society. Oxford, England. *Member*, 1990-present.

Pulaski County Bar Association. Little Rock, Arkansas. *Member*, 2001-2002. *Co-chair*, Law School Liaison Committee, 2001-2002.

Reserve Officers Association. Washington, D.C. *Life Member*.



U.S. Department of Justice

*United States Attorney
Eastern District of Arkansas*

FOR IMMEDIATE RELEASE
December 15, 2006

CONTACT: **Office of Public Affairs,
202-514-2007**

**JUSTICE DEPARTMENT ANNOUNCES APPOINTMENT
OF J. TIMOTHY GRIFFIN AS INTERIM UNITED STATES ATTORNEY
FOR THE EASTERN DISTRICT OF ARKANSAS**

LITTLE ROCK, Ark. — The Justice Department today announced the appointment of J. Timothy Griffin to serve as the interim U.S. Attorney for the Eastern District of Arkansas. Mr. Griffin will serve under an Attorney General appointment. He will succeed Bud Cummins, who will resign on December 20, 2006, to pursue opportunities in the private sector.

Mr. Griffin currently serves as a Special Assistant U.S. Attorney in the Eastern District of Arkansas. He recently completed a year of active duty in the U.S. Army, and is in his tenth year as an officer in the U.S. Army Reserve, Judge Advocate General's Corps (JAG), holding the rank of Major. In September 2005, Mr. Griffin was mobilized to active duty to serve as an Army prosecutor at Fort Campbell, Ky. At Fort Campbell, he prosecuted 40 criminal cases, including *U.S. v. Mikel*, which drew national interest after Pvt. Mikel attempted to murder his platoon sergeant and fired upon his unit's early morning formation. Pvt. Mikel pleaded guilty to attempted murder and was sentenced to 25 years in prison.

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Mr. Griffin has also served as Senior Counsel to the House Government Reform Committee, as an Associate Independent Counsel for *In Re: Housing and Urban Development Secretary Henry Cisneros*, and as an associate attorney with a New Orleans law firm.

Mr. Griffin graduated *cum laude* from Hendrix College in Conway, Ark., and received his law degree, *cum laude*, from Tulane Law School. He also attended graduate school at Pembroke College at Oxford University. Mr. Griffin was raised in Magnolia, Ark., and resides in Little Rock with his wife, Elizabeth.

###

Seidel, Rebecca

From: Seidel, Rebecca
Sent: Wednesday, January 17, 2007 7:43 PM
To: Goodling, Monica; Hertling, Richard
Cc: Sampson, Kyle
Subject: RE: Talking Points & Resume for Tim Griffin

FYI - I have left two voicemails for Sessions staff and have not heard back. I sent her an email with the setup and the attachments. Will let you know if I hear back.

From: Goodling, Monica
Sent: Wednesday, January 17, 2007 6:45 PM
To: Seidel, Rebecca; Hertling, Richard
Cc: Sampson, Kyle
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Rebecca/Richard – WH Political reached out to Sen. Sessions and requested that he ask helpful questions to make clear that Tim Griffin is qualified to serve. They requested that someone in our OLA call the Senator's staff and make sure that we take advantage of the offer. Here are talkers on Griffin, as well as a narrative that can be used by staff, and his resume. I think it would actually be helpful for all of the Rs to have. In any case, can you please touch base with Sessions' folks? Thanks.

<< File: Griffin Talkers.doc >> << File: Griffin narrative.doc >> << File: Griffin resume.doc >>

Tracking:	Recipient	Read
	Goodling, Monica	Read: 1/17/2007 7:46 PM
	Hertling, Richard	Read: 1/17/2007 7:43 PM
	Sampson, Kyle	Read: 1/17/2007 9:57 PM

Seidel, Rebecca

From: Goodling, Monica
Sent: Wednesday, January 17, 2007 7:46 PM
To: Seidel, Rebecca
Subject: RE: Talking Points & Resume for Tim Griffin

Thanks

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Seidel, Rebecca

From: Elston, Michael (ODAG)
Sent: Thursday, February 01, 2007 3:52 PM
To: Hertling, Richard
Cc: Sampson, Kyle; Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
Subject: Bud Cummins

just called to let me know that Pryor's and Schumer's staff have called and asked him to testify on Tuesday. He declined, but wanted to know if we wanted him to testify -- would tell the truth about his circumstances and would also strongly support our view of S 214.

Thoughts?

Seidel, Rebecca

From: Sampson, Kyle
Sent: Thursday, February 01, 2007 4:15 PM
To: Elston, Michael (ODAG); Hertling, Richard
Cc: Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
Subject: RE: Bud Cummins

I don't think he should. How would he answer:

Did you resign voluntarily?
Were you told why you were being asked to resign?
Who told you?
When did they tell you?
What did they say?
Did you ever talk to Tim Griffin about his becoming U.S. Attorney?
What did Griffin say?
Did Griffin ever talk about being AG appointed and avoiding Senate confirmation?
Were you asked to resign because you were underperforming?
If not, then why?
Etc., etc.

-----Original Message-----

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Sent: Thursday, February 01, 2007 3:52 PM
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Cc: Sampson, Kyle; Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
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From: Elston, Michael (ODAG)
Sent: Thursday, February 01, 2007 4:35 PM
To: Sampson, Kyle; Hertling, Richard
Cc: Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
Subject: Re: Bud Cummins

Agreed.

-----Original Message-----

From: Sampson, Kyle
To: Elston, Michael (ODAG); Hertling, Richard
CC: Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
Sent: Thu Feb 01 16:15:00 2007
Subject: RE: Bud Cummins

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Thoughts?

Seidel, Rebecca

From: Scott-Finan, Nancy
Sent: Thursday, February 01, 2007 6:46 PM
To: Moschella, William; Seidel, Rebecca
Cc: Hertling, Richard; Tracci, Robert N; Elston, Michael (ODAG)
Subject: RE: SJC hearing on USA issue - Intel

We have 8 books in process with
A placeholder for the testimony
A placeholder for the views letter on S. 214
S. 214
The correspondence with Feinstein/Leahy, Conyers and Pryor
The relevant parts of the DOJ oversight transcript from 1/18/07
The Feinstein statement floor statement on the issue
Editorials
The Feinstein correspondence re USA Carol Lam

From: Moschella, William
Sent: Thursday, February 01, 2007 6:36 PM
To: Seidel, Rebecca
Cc: Scott-Finan, Nancy; Hertling, Richard; Tracci, Robert N; Elston, Michael (ODAG)
Subject: RE: SJC hearing on USA issue - Intel

Thanks. Elston's your man for that one.

I emailed Richard the other day and wanted to make sure we were getting two notebooks with:

1) all correspondence on this issue; 2) the major editorials on the subject; 3) all legislation introduced on this matter; and 4) any other info OLA deems pertinent.

From: Seidel, Rebecca
Sent: Thursday, February 01, 2007 6:12 PM
To: Elston, Michael (ODAG); Moschella, William; Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO)
Cc: Scott-Finan, Nancy; Hertling, Richard; Tracci, Robert N
Subject: SJC hearing on USA issue - Intel

Just spoke with Schumer's Chief counsel.
Other witnesses will be:
For the Dems:
Mary Jo White (you will recall she was NY USA under Clinton)
Laurie Levinson (former AUSA in Central D. of CA for many years, Bush and Clinton)
For the Rs:
Stuart Gerson

The DAG will have his own panel

Schumer staff asked for examples of problematic individuals that Judges have appointed since we have said this has been a problem in the past, we need to give examples.

P.s. Rob just received intel about an HJC hearing on the same subject -

Dems are planning a hearing on this subject before the Subcomm on Comm and Admin Law (which has oversight of U.S. Attnys) on Feb. 15.

No word about witnesses yet but certainly a senior DoJ person is likely to be requested.

Seidel, Rebecca

From: Moschella, William
Sent: Thursday, February 01, 2007 6:53 PM
To: Scott-Finan, Nancy; Seidel, Rebecca
Cc: Hertling, Richard; Tracci, Robert N; Elston, Michael (ODAG)
Subject: RE: SJC hearing on USA issue - Intel

Excellent. The sooner the DAG can get one the better.

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Cc: Hertling, Richard; Tracci, Robert N; Elston, Michael (ODAG)
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Seidel, Rebecca

From: Scott-Finan, Nancy
Sent: Friday, February 02, 2007 1:04 PM
To: Hertling, Richard; Elston, Michael (ODAG); Moschella, William; Seidel, Rebecca; Tracci, Robert N; Sampson, Kyle; Goodling, Monica
Cc: Cabral, Catalina; Long, Linda E; Nowacki, John (USAEO)
Subject: RE: House Judiciary request for witness for hearing on USAs

Nowacki reports that the Committee has contacted Dan Bogden, the outgoing USA in Nevada, to testify. Bogden has not returned the call.

-----Original Message-----

From: Hertling, Richard
Sent: Friday, February 02, 2007 12:12 PM
To: Elston, Michael (ODAG); Scott-Finan, Nancy; Moschella, William; Seidel, Rebecca; Tracci, Robert N; Sampson, Kyle; Goodling, Monica
Cc: Cabral, Catalina; Long, Linda E
Subject: RE: House Judiciary request for witness for hearing on USAs

Someone from DOJ will need to testify. Mike, Will, either one of you? Mike Battle?

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Friday, February 02, 2007 12:03 PM
To: Scott-Finan, Nancy; Hertling, Richard; Moschella, William; Seidel, Rebecca; Tracci, Robert N; Sampson, Kyle; Goodling, Monica
Cc: Cabral, Catalina; Long, Linda E
Subject: Re: House Judiciary request for witness for hearing on USAs

I don't think the DAG should/will testify. He will be on the record after Tuesday. They can read the transcript.

-----Original Message-----

From: Scott-Finan, Nancy
To: Hertling, Richard; Elston, Michael (ODAG); Moschella, William; Seidel, Rebecca; Tracci, Robert N; Sampson, Kyle; Goodling, Monica
CC: Cabral, Catalina; Long, Linda E
Sent: Fri Feb 02 10:10:25 2007
Subject: House Judiciary request for witness for hearing on USAs

Eric Tamarkin, a D staffer for the Commercial and Administrative Law Subcommittee, called this morning to request the DAG as the Department's witness at their legislative hearing on February 15, at 10:30 am on the changes to the Patriot Act with regard to the interim appointment of US Attorneys. They have also requested a staff briefing prior to the hearing.

Seidel, Rebecca

From: Goodling, Monica
Sent: Monday, February 05, 2007 6:04 AM
To: Sampson, Kyle; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Seidel, Rebecca; Scott-Finan, Nancy; Scolinos, Tasia; Roehrkasse, Brian
Cc: Nowacki, John (USAEO)
Subject: USA Info (not all is for public use)

Attachments: TPS - US Attorney vacancy-appointment points.pdf; FACT SHEET - USA appointments.pdf; USA stats.doc; Current & upcoming vacancies.doc; Vacancies over the past year.doc; Griffin Talkers.doc; ARK Biographies.doc

Folks – Please find attached various materials for use in the prep session and in the upcoming hearings (with thanks to John and Angela for their late-night assistance). There are additional materials coming later, but I am awaiting confirmation of a few facts for the others. Also, I have some piles of materials (i.e. resumes for various categories of people and appointment authorities together) that I'll bring to the prep and hearing for reference. Please let me know if you have thoughts or edits on any of the materials below. Thanks.

Current talking points on USAs (**has changed; replace old versions**):



TPS - US Attorney
vacancy-appeo...

Current fact sheet on USAs (has not changed):



FACT SHEET - USA
appointments....

Interesting USA stats:



USA stats.doc (38
KB)

List of status of current and upcoming vacancies (**DO NOT DISTRIBUTE OUTSIDE DOJ**):



Current & upcoming
vacancies.d...

List of vacancies over the past year (**DO NOT DISTRIBUTE OUTSIDE DOJ**):



Vacancies over the
past year.d...

Talking points on Tim Griffin:



Griffin Talkers.doc
(30 KB)

Griffin and prior nominees in the state of Arkansas (his experience is well within the norm):



ARK
ographies.doc (46 K)

TALKING POINTS: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

Overview:

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.
- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
 - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 15 individuals to serve as U.S. Attorney (12 have been confirmed to date).

U.S. Attorneys Serve at the Pleasure of the President:

- United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.
- United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or

inappropriately influence a particular investigation, criminal prosecution or civil case.

- Whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

The Administration Must Ensure an Effective Transition When Vacancies Occur:

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 124 confirmations of new U.S. Attorneys since January 20, 2001.
- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition, often another senior manager from that office or an experienced attorney from within the Department.

The Administration Is Nominating Candidates for U.S. Attorney Positions:

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 15 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 13 vacancies have been created. Of those 13 vacancies, the Administration nominated candidates to fill 5 of these positions (3 were confirmed to date), has interviewed candidates for 7 positions, and is waiting to receive names to set up interviews for 1 position – all in consultation with home-state Senators.

The 13 Vacancies Were Filled on an Interim Basis Using a Range of Authorities, in Order To Ensure an Effective and Smooth Transition:

- In 4 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 7 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

Amending the Statute Was Necessary:

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.
- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on

the Attorney General's appointment authority resulted in numerous, recurring problems.

- The statute was amended for several reasons:
 - 1) The previous provision was constitutionally-suspect in that it is inappropriate and inconsistent with sound separation of powers principles to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney;
 - 2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
 - 3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.
- Court appointments raise significant conflict questions. After being appointed by the court, the judicial appointee would have authority for litigating the entire federal criminal and civil docket for this period before the very district court to whom he was beholden for his appointment. Such an arrangement at a minimum gives rise to an appearance of potential conflict that undermines the performance of not just the Executive Branch, but also the Judicial one. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General.
- Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- **Erik Peterson** – Western District of Wisconsin;
- **Charles Rosenberg** – Eastern District of Virginia;
- **Thomas Anderson** – District of Vermont;
- **Martin Jackley** – District of South Dakota;
- **Alexander Acosta** – Southern District of Florida;
- **Troy Eid** – District of Colorado;
- **Phillip Green** – Southern District of Illinois;
- **George Holding** – Eastern District of North Carolina;
- **Sharon Potter** – Northern District of West Virginia;
- **Brett Tolman** – District of Utah;
- **Rodger Heaton** – Central District of Illinois;
- **Deborah Rhodes** – Southern District of Alabama;
- **Rachel Paulose** – District of Minnesota;
- **John Wood** – Western District of Missouri; and
- **Rosa Rodriguez-Velez** – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 13 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 4 of the 13 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made) until a nomination could be or can be submitted to the Senate. Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed).

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office in an acting capacity under the Vacancies Reform Act, but the First Assistant retired a month later. At that point, the Department selected another employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting United States Attorney until she retired and Matt Dummermuth was appointed interim United States Attorney.

For 8 of the 13 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 12 times since the authority was amended in March 2006.

In 2 of the 12 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

In 1 case, the Department originally selected the First Assistant to serve as acting United States Attorney; however, she retired from federal service a month later. At that point, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **Northern District of Iowa** – Matt Dummermuth

In the 8 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;

- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

Seidel, Rebecca

From: Nowacki, John (USAEO) [John.Nowacki@usdoj.gov]

Sent: Monday, February 05, 2007 12:32 PM

To: Hertling, Richard; Scott-Finan, Nancy; Seidel, Rebecca; Goodling, Monica; Elston, Michael (ODAG);
Battle, Michael (USAEO)

Subject: HJC hearing re USA's

Carol Lam (CA-S) says that she was contacted by House Judiciary (on Friday) and told that Rep. Conyers would like her to testify at the hearing. She said that she did not provide an answer.

OLA000000583

Seidel, Rebecca

From: Scott-Finan, Nancy
Sent: Tuesday, February 06, 2007 4:19 PM
To: Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Seidel, Rebecca; Battle, Michael (USAEO); Nowacki, John (USAEO)
Subject: Next Hearing on replacement of the U.S. Attorneys

Have we come to a decision as to who will be the witness at the House Judiciary Subcommittee hearing? It has to be someone who can withstand 3 hours of questioning as Paul did this morning.

Seidel, Rebecca

From: Seidel, Rebecca
Sent: Thursday, February 08, 2007 11:20 AM
To: Scott-Finan, Nancy
Subject: Re: SJC mkup

For what?

-----Original Message-----

From: Scott-Finan, Nancy
To: Sampson, Kyle; Seidel, Rebecca; Hertling, Richard; Moschella, William; Goodling, Monica; Elston, Michael (ODAG); Nowacki, John (USAE0); Scolinos, Tasia
Sent: Thu Feb 08 11:14:10 2007
Subject: Re: SJC mkup *

Have heard back from Schumer staff that the 4 pm next Wednesday works. They will get back to me with the list of members.
Nancy Scott-Finan

Seidel, Rebecca

From: Scott-Finan, Nancy
Sent: Thursday, February 08, 2007 11:21 AM
To: Seidel, Rebecca
Subject: Re: SJC mkup

Member mtg on EARS reports that Schumer requested with Paul.
Nancy Scott-Finan

-----Original Message-----
From: Seidel, Rebecca
To: Scott-Finan, Nancy
Sent: Thu Feb 08 11:20:13 2007
Subject: Re: SJC mkup

For what?

-----Original Message-----
From: Scott-Finan, Nancy
To: Sampson, Kyle; Seidel, Rebecca; Hertling, Richard; Moschella, William; Goodling, Monica; Elston, Michael (ODAG); Nowacki, John (USAEO); Scolinos, Tasia
Sent: Thu Feb 08 11:14:10 2007
Subject: Re: SJC mkup

Have heard back from Schumer staff that the 4 pm next Wednesday works. They will get back to me with the list of members.
Nancy Scott-Finan

Seidel, Rebecca

From: Goodling, Monica
Sent: Saturday, March 03, 2007 3:31 PM
To: Sampson, Kyle; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian; Hertling, Richard; Elston, Michael (ODAG); Scott-Finan, Nancy; Seidel, Rebecca
Subject: Updated USA documents - PUBLIC

Attachments: TPS - US Attorney vacancy-appointment points.pdf; FACT SHEET - USA appointments.pdf; Examples of Difficult Transition Situations.pdf; USA prosecution only stats.pdf; WHY 120 DAYS IS NOT REALISTIC.doc; Griffin Talkers.doc; Griffin resume.doc

Attached please find updated documents in advance of this week's hearing. (These include the resignations in Nevada and New Mexico, where we elevated the First Assistant to the position of Acting U.S. Attorney under the Vacancy Reform Act; no additional resignations are expected before mid-March, when Chiara departs.) Please let me know if you have any questions. Thanks!



TPS - US Attorney
vacancy-appe...



FACT SHEET - USA
appointments....



Examples of
Difficult Transiti...



USA prosecution
only stats.pdf...



WHY 120 DAYS IS
NOT REALISTIC....



Griffin Talkers.doc
(33 KB)



Griffin resume.doc
(89 KB)

TALKING POINTS: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

Overview:

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.
- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
 - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 16 individuals to serve as U.S. Attorney (12 have been confirmed to date).

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- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.
- United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or

inappropriately influence a particular investigation, criminal prosecution or civil case.

- Whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

The Administration Must Ensure an Effective Transition When Vacancies Occur:

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 124 confirmations of new U.S. Attorneys since January 20, 2001.
- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition, often another senior manager from that office or an experienced attorney from within the Department.

The Administration Is Nominating Candidates for U.S. Attorney Positions:

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 16 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 18 vacancies have been created. Of those 18 vacancies, the Administration nominated candidates to fill 6 of these positions (3 were confirmed to date), has interviewed candidates for 8 positions, and is waiting to receive names to set up interviews for the remaining positions – all in consultation with home-state Senators.

The 18 Vacancies Were Filled on an Interim Basis Using a Range of Authorities, in Order To Ensure an Effective and Smooth Transition:

- In 7 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 10 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate. In 1 of those 10 cases, the First Assistant had resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

Amending the Statute Was Necessary:

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.
- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems.

- The statute was amended for several reasons:
 - 1) The previous provision was constitutionally-suspect in that it is inappropriate and inconsistent with sound separation of powers principles to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney;
 - 2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
 - 3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.

- Court appointments raise significant conflict questions. After being appointed by the court, the judicial appointee would have authority for litigating the entire federal criminal and civil docket for this period before the very district court to whom he was beholden for his appointment. Such an arrangement at a minimum gives rise to an appearance of potential conflict that undermines the performance of not just the Executive Branch, but also the Judicial one. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General.

- Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 16 individuals to serve as United States Attorney. The 16 nominations are:

- **Erik Peterson** – Western District of Wisconsin;
- **Charles Rosenberg** – Eastern District of Virginia;
- **Thomas Anderson** – District of Vermont;
- **Martin Jackley** – District of South Dakota;
- **Alexander Acosta** – Southern District of Florida;
- **Troy Eid** – District of Colorado;
- **Phillip Green** – Southern District of Illinois;
- **George Holding** – Eastern District of North Carolina;
- **Sharon Potter** – Northern District of West Virginia;
- **Brett Tolman** – District of Utah;
- **Rodger Heaton** – Central District of Illinois;
- **Deborah Rhodes** – Southern District of Alabama;
- **Rachel Paulose** – District of Minnesota;
- **John Wood** – Western District of Missouri;
- **Rosa Rodriguez-Velez** – District of Puerto Rico; and
- **Jeffrey Taylor** – District of Columbia.

All but Phillip Green, John Wood, Rosa Rodriguez-Velez, and Jeffrey Taylor have been confirmed by the Senate – 12 of 16 nominations.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 18 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 7 of the 18 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made) until a nomination could be or can be submitted to the Senate. Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney

- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);
- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed);
- **Southern District of Georgia** – FAUSA Edmund A. Booth, Jr. is acting USA;
- **District of New Mexico** – FAUSA Larry Gomez is acting USA; and
- **District of Nevada** – FAUSA Steven Myhre is acting USA.

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office in an acting capacity under the Vacancies Reform Act, but the First Assistant retired a month later. At that point, the Department selected another employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting United States Attorney until she retired and Matt Dummermuth was appointed interim United States Attorney.

For 10 of the 18 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has been nominated to fill the position permanently);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);

- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Northern District of California** – Scott Schools was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **Southern District of California** – Karen Hewitt was appointed interim United States Attorney when incumbent United States Attorney resigned.

ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 14 times since the authority was amended in March 2006.

In 2 of the 14 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

In 1 case, the Department originally selected the First Assistant to serve as acting United States Attorney; however, she retired from federal service a month later. At that point, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **Northern District of Iowa** – Matt Dummermuth

In the 10 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney

resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);

- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Northern District of California** – Scott Schools was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **Southern District of California** – Karen Hewitt was appointed interim United States Attorney when incumbent United States Attorney resigned.

Examples of Difficult Transition Situations

Examples of Districts Where Judges Did Not Exercise Their Court Appointment (Making the Attorney General's Appointment Authority Essential To Keep the Position Filled until a Nominee Is Confirmed)

- 1. Southern District of Florida:** In 2005, a vacancy occurred in the SDFL. The Attorney General appointed Assistant Attorney General of the Civil Rights Division, Alex Acosta, for 120 days. At the end of the term, the Court indicated that they had (years earlier) appointed an individual who later became controversial. As a result, the Court indicated that they would not make an appointment unless the Department turned over its internal employee files and FBI background reports, so that the court could review potential candidates' backgrounds. Because those materials are protected under federal law, the Department declined the request. The court then indicated it would not use its authority at all, and that the Attorney General should make multiple, successive appointments. While the selection, nomination, and confirmation of a new U.S. Attorney was underway, the Attorney General made three 120-day appointments of Mr. Acosta. Ultimately, he was selected, nominated, and confirmed to the position.
- 2. Eastern District of Oklahoma:** In 2000-2001, a vacancy occurred in the EDOK. The court refused to exercise the court's authority to make appointments. As a result, the Attorney General appointed Shelly Sperling to three 120-day appointments before Sperling was nominated and confirmed by the Senate (he was appointed by the Attorney General to a fourth 120-day term while the nomination was pending).
- 3. In the Western District of Virginia:** In 2001, a vacancy occurred in the WDVA. The court declined to exercise its authority to make an appointment. As a result, the Attorney General made two successive 120-day appointments (two different individuals).

This problem is not new ...

- 4. The District of Massachusetts.** In 1987, the Attorney General had appointed an interim U.S. Attorney while a nomination was pending before the Senate. The 120-day period expired before the nomination had been reviewed and the court declined to exercise its authority. The Attorney General then made another 120-day appointment. The legitimacy of the second appointment was questioned and was reviewed the U.S. District Court for the District of Massachusetts. The Judge upheld the validity of the second 120-day appointment where the court had declined to make an appointment. See 671 F. Supp. 5 (D. Ma. 1987).